

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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BARRY-WEHMILLER COMPANIES, INC.,

Plaintiff,

vs.

Civil Action No. 09-CV-674 BBC

CARL R. MARSCHKE, GAY MARSCHKE,  
KARL W. MARSCHKE, LYNDA LUDWIG,  
DAN LUDWIG, DEAN MARSCHKE,

Defendants.

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**PLAINTIFF BARRY-WEHMILLER COMPANIES, INC.'S  
MOTION TO CONSOLIDATE PURSUANT TO FRCP 42(A)**

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Plaintiff, Barry-Wehmiller Companies, Inc. ("BWC"), hereby moves to consolidate the above-styled action pursuant to Rule 42(a) of the Federal Rules of Civil Procedure with *Carl Marschke and Gay Marschke v. Barry-Wehmiller Companies, Inc.*, No. 09-cv-398-BBC, United States District Court for the Western District of Wisconsin, a related action which also is pending before this Court.

In support of its motion, BWC states as follows.

1. Rule 42(a) of the Federal Rules of Civil Procedure vests this Court with discretion to consolidate actions that involve a common question of law or fact.
2. Here, the subject actions meet the criteria for consolidation. Both arise out of a dispute concerning a Sale Agreement for the assignment of certain promissory notes held by Defendants to BWC. The claims in both actions, under the express terms of the Sale Agreement, are governed by Missouri law. There is likely to be substantial overlap in the witnesses and documents in each case, as suggested by the parties' agreement to adopt the Rule 26(a) initial

disclosures previously exchanged in *Carl Marschke and Gay Marschke v. Barry-Wehmiller Companies, Inc.*, No. 09-cv-398-BBC in this action. Consolidation will promote judicial economy, timeliness and convenience.

3. Conversely, there is no indication that consolidation will result in inconvenience, prejudice or delays. Both cases are in the same procedural posture and stage of litigation. In fact, at the parties' suggestion, the same case schedule, including the discovery deadlines, pretrial conference and trial dates, has been adopted for both actions. Consolidation will simply reduce or eliminate unnecessary discovery and motions and reduce two consecutive trials to one.

4. Finally, this Court previously acknowledged that the two actions are appropriate for consolidation in the Western District of Wisconsin. *See Carl Marschke and Gay Marschke v. Barry-Wehmiller Companies, Inc.*, No. 09-cv-398-BBC, United States District Court for the Western District of Wisconsin, 10/16/09 Notice to the Court of Opinion & Order [Doc #42] (denying BWC's motion to dismiss and motion to transfer to the Eastern District of Missouri pursuant to 28 USC § 1404(a)).

WHEREFORE, Plaintiff, Barry-Wehmiller Companies, Inc., respectfully requests an order consolidating the above-styled action with *Carl Marschke and Gay Marschke v. Barry-Wehmiller Companies, Inc.*, No. 09-cv-398-BBC, United States District Court for the Western District of Wisconsin, and for such further instructions and relief as this Court deems proper.

DATED: December 31, 2009.

/s/ Jeanine R. Bermel, pro hac admission  
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*Attorneys for Plaintiff Barry-Wehmiller  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was filed electronically with the Clerk of Court and served by operation of the Court's electronic filing system to all attorneys of record on December 31, 2009:

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*Attorneys for Defendants*

s/ Jeanine R. Bermel